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In The
Supreme Court of The United States

October Term, 1964

No. 552

SAMUEL C. HALPERT, a single man, HAROLD A. MILLER and GRACE B. MILLER, his wife, and EUGENE B. McDONOUGH and LILLIAN McDONOUGH, his wife,

Appellants

v.

STEWART L. UDALL, individually and as Secretary of the Interior of the United States of America

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On Appeal from the United States District Court for the Southern District of Florida, Miami Division

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BRIEF OF APPELLANTS OPPOSING MOTION TO AFFIRM

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I

The United States says there is no justiciable controversy presenting a substantial constitutional question because, so says the United States, the Act of Congress has not interfered in any way with the personal use and enjoyment by the Appellants of their land, nor have any

acts of the Appellee, so says the United States, interfered in any way with the personal use and enjoyment.

That paragraph in the Motion to Affirm is in disregard of the facts.

The Appellants here, American citizens owning land abutting a public highway, have to seek permission of the Appellee to use the public highway to reach their land and have to submit to an identification check by the Appellee because the United States Congress decided to surround their land with a park.

The Court below found that was the fact but said there was no violation of any of the rights of the Appellants in those conditions—we refer to the facts as set forth on pages 18 through 23 of our Jurisdictional Statement—now the Appellee says he doesn't even do what was admittedly done.

II

The United States goes on to say that there was not a "taking" of the property in this case. If "taking" be discussed, there was not a "letting alone" either, but a sneaky piece of legislation under which Congress, emulating the lives of the Texas cattle barons, chose to enclave the land of the Appellants with the result that the Act of Congress attacked here and the acts of the Appellee Secretary of the Interior pursuant thereto are "a red flag to any title lawyer, purchaser, developer or investor" in the language of the specially concurring judge below.

The "taking" cases are therefore of no import here.

III

It is a remarkable contention, and one which runs counter to long established law (*Philadelphia Co. v. Stimson*, 223 U.S. 605, 32 S.Ct. 340 (1912) through *Dugan v. Rank*, 372 U.S. 609, 83 S. Ct. 999 (1963)) as well as to the principles of our institutions, that the Government now urges that the sole remedy for one injured by an unconstitutional act of Congress (and the acts of officers pursuant thereto) is to sue for damages.

We respectfully move that the Court take jurisdiction and set the cause for plenary consideration.

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